

MABEE, J.

JANUARY 11TH, 1905.

CHAMBERS.

MASSEY-HARRIS CO v. DE LAVAL SEPARATOR CO

*Discovery—Examination of Officer of Defendant Company—
 Libel—Privilege—Names of Persons to Whom Impeached
 Document Sent—Source of Information.*

Motion by plaintiffs to compel defendants' manager to attend for re-examination for discovery and make disclosure of certain matters withheld by him.

Grayson Smith, for plaintiffs.

C. S. MacInnes, for defendants' manager.

MABEE, J.:—The action is for damages alleged to have been sustained by plaintiffs by reason of the publication of a circular by defendants, which is set out in full in the statement of claim. Defendants plead, among other things, that, if the circular was written or published by them, it was so written and published without malice and in the bona fide belief that it was true; that it was a privileged communication, made with an interest and under a duty to make the same, and sent in the ordinary course of business to the agents of the company in connection with the business of the company. I presume this is intended to mean to the agents of the defendant company, although it was stated at the argument that possibly some of these were agents of both plaintiff and defendant companies. One of the statements in the circular was: "We are advised that the Massey-Harris Co. have decided to discontinue their separator business."

Upon the examination of defendants' manager he was asked to state the names of the persons to whom the circular had been sent. It appeared that he had a list with these names all written down upon it. He was asked to produce and shew this to plaintiffs' counsel—he refused to do either. He was asked where the information came from upon the strength of which the circular was published—in other words, who "advised" that plaintiffs had decided to discontinue that branch of their business—this he also refused to disclose.